

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DONALD F. BENOIT, Derivatively on  
Behalf of MBNA CORP. and on Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

vs.

BRUCE L. HAMMONDS, *et al.*

Defendants,

--and--

BANK OF AMERICA CORPORATION, a  
Delaware Corporation, AS SUCCESSOR IN  
INTEREST TO MBNA CORP., and MBNA  
CORP., a Maryland Corporation,

Nominal Defendants.

Civ. No. 07-CV-561

LEMON BAY PARTNERS, and MALCOLM  
ROSENWALD,

Plaintiff,

vs.

BRUCE L. HAMMONDS, *et al.*

Defendants,

--and--

BANK OF AMERICA CORPORATION, AS  
SUCCESSOR IN INTEREST TO MBNA  
CORP., and MBNA CORP.,

Nominal Defendants.

Civ. No. 07-CV-562

**AFFIDAVIT OF RICHARD H. MORSE**

STATE OF DELAWARE                    )  
  : ss.  
COUNTY OF NEW CASTLE            )

RICHARD H. MORSE, being duly sworn, deposes and says:

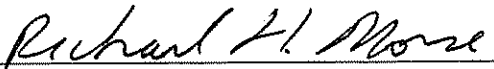
1. I am a member of the Bar of the State of Delaware and of Young  
Conaway Stargatt & Taylor, LLP, counsel for defendants in this action. I submit this

affidavit to provide the Court with materials cited in Defendants' Answering Brief in Opposition to the Benoit Group's Motion to Vacate the PSLRA Stay of Discovery.

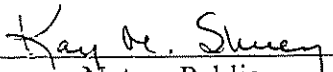
2. Attached hereto as Exhibit A is a true and correct copy of a January 14, 2008 E-mail from Laurence Paskowitz.

3. Attached hereto as Exhibit B is a true and correct copy of a January 16, 2008 E-mail from Edward Micheletti.

4. Attached hereto as Exhibit C is a true and correct copy of a January 16, 2008 E-mail from Richard Pepperman.

  
Richard H. Morse

Sworn to before me  
on this 7th day of February, 2008

  
Notary Public

## EXHIBIT A

---

**From:** Classattorney@aol.com  
**Sent:** Monday, January 14, 2008 7:42 PM  
**To:** Pepperman, Richard  
**Cc:** Possick, M. David; rjacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; Edward.Micheletti@skadden.com; rmorse@ycst.com  
**Subject:** Re: MBNA-REPLY BRIEF

Dear Counsel:

In the recent briefing on the Benoit Group's lead plaintiff motion, defendants indicated that fact discovery in the class action led by Activest is proceeding apace and a discovery cutoff date of February 29, 2008 has been set. While we obviously disagree that Activest can lead the Benoit Group case, we do feel that it would be most efficient for the Benoit Group's counsel to participate in the ongoing discovery so as to avoid duplication of effort at some later stage.

In order to accomplish this, we request that defendants stipulate to lifting the PSLRA stay. There is no justification for the stay to bar discovery in the Benoit Group cases where discovery into the pre-April 20, 2005 events is ongoing in other litigation, and will be helpful in both the Activest case and in this case. While we believe courts have lifted the stay in situations where the discovery covered by the PSLRA stay is already being produced to other parties, we hope that this matter can be worked out among counsel, without the necessity of motion practice. Of course, we would work with Activest's counsel to prevent any duplication of effort, and any unnecessary burden on the defendants.

For these reasons, we request that defendants stipulate to lift the PSLRA stay. Please let us know your position on this request by the end of this week, if possible.

Laurence D. Paskowitz, Esq.  
Paskowitz & Associates  
60 East 42nd Street  
46th Floor  
New York, NY 10165  
(212) 685-0969 (tel.)  
(212) 685-2306 (fax)  
(718) 344-6470 (cell)  
(800) 705-9529 (toll free)

[classattorney@aol.com](mailto:classattorney@aol.com)

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2/7/2008

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## EXHIBIT B

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**From:** Micheletti, Edward B [Edward.Micheletti@skadden.com]  
**Sent:** Wednesday, January 16, 2008 2:11 PM  
**To:** Classattorney@aol.com  
**Cc:** Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Clark, Victor (WIL); Friedman, Stacey; Williams, Ryan C.; Welch, Edward P (WIL); Saltzstein, Susan L (NYC); rmorse@ycst.com; Pepperman, Richard  
**Subject:** RE: MBNA--REPLY BRIEF

Our clients are not named as defendants in the class action referenced in your e-mail, so we do not take a position about how discovery should proceed in that case. However, it is our position, as set forth in our response to your motion to consolidate, that your action was improperly filed, and should be stayed until after the Court has the opportunity to decide your pending motion for reconsideration in the action that was already dismissed. It is also our view that -- to the extent the Court reaches the merits of your complaint -- you have not stated a claim against our clients, and thus, discovery at this time is not appropriate.

Regards,

Ed M.

---

**From:** Classattorney@aol.com [mailto:Classattorney@aol.com]  
**Sent:** Monday, January 14, 2008 7:42 PM  
**To:** pepperman@sullcrom.com  
**Cc:** possickmd@sullcrom.com; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Clark, Victor (WIL); FriedmanS@sullcrom.com; WilliamsRy@sullcrom.com; Welch, Edward P (WIL); Saltzstein, Susan L (NYC); Micheletti, Edward B (WIL); rmorse@ycst.com  
**Subject:** Re: MBNA--REPLY BRIEF

Dear Counsel:

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2/7/2008

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2/7/2008



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2/7/2008

## EXHIBIT C

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**From:** Pepperman, Richard  
**Sent:** Wednesday, January 16, 2008 4:53 PM  
**To:** 'Classattorney@aol.com'; Edward.Micheletti@skadden.com  
**Cc:** Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; rmorse@ycst.com  
**Subject:** RE: MBNA--REPLY BRIEF

Larry,

We also do not agree to lift the PSLRA stay of discovery. Particularly given that the Court has not yet ruled on your lead plaintiff motion, we think that the request is premature. Of course, once the stay is lifted, we will provide you with copies of the discovery taken in the other two related actions. As always, I am happy to discuss this issue with you further if you'd like,

Rick

-----Original Message-----

**From:** Classattorney@aol.com [mailto:Classattorney@aol.com]  
**Sent:** Wednesday, January 16, 2008 2:16 PM  
**To:** Edward.Micheletti@skadden.com  
**Cc:** Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; rmorse@ycst.com; Pepperman, Richard  
**Subject:** Re: MBNA--REPLY BRIEF

Ed: I appreciate your response, and your getting back to us in a timely manner. I am still waiting to hear from Sullivan & Cromwell on this matter. Larry P.

In a message dated 1/16/2008 2:11:16 P.M. Eastern Standard Time, Edward.Micheletti@skadden.com writes:

Our clients are not named as defendants in the class action referenced in your e-mail, so we do not take a position about how discovery should proceed in that case. However, it is our position, as set forth in our response to your motion to consolidate, that your action was improperly filed, and should be stayed until after the Court has the opportunity to decide your pending motion for reconsideration in the action that was already dismissed. It is also our view that -- to the extent the Court reaches the merits of your complaint -- you have not stated a claim against our clients, and thus, discovery at this time is not appropriate.

Regards,

Ed M.

2/7/2008

Message

Page 2 of 2

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2/7/2008

**CERTIFICATE OF SERVICE**

I, Richard H. Morse, hereby certify that on February 7, 2008 I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

A. Zachary Naylor  
CHIMICLES & TIKELLIS, LLP  
One Rodney Square  
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Wilmington, DE 19899

I further certify that on February 7, 2008, I caused a copy of the foregoing document to be served by Federal Express on the following counsel:

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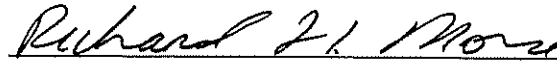
Irving Bizar  
BALLON STOLL BADER &  
NADLER, LLP  
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New York, NY 10018

I further certify that on February 7, 2008, I caused a copy of the foregoing document to be served by hand delivery on the below listed counsel:

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Edward B. Micheletti  
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